

REC-1001  
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket No. CAA-98-033A  
)  
Bob Propheter Construction, )  
L.L.C., )  
) Proceeding Under  
) Section 113(d)  
) of the Clean Air Act,  
) 42 U.S.C. § 7413(d).  
\_\_\_\_\_  
Respondent. )

**Consent Agreement and Final Order**

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, brought this civil administrative action under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complaint alleges that Respondent violated Section 111 of the Act, 42 U.S.C. § 7411, and applicable regulations promulgated at 40 C.F.R. Part 60, Subpart I, at its hot mix asphalt plant, formerly located at the intersection of Illinois Routes 17 and 91 in Toulon, Illinois.

3. Respondent filed an answer and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

### Stipulations

4. Respondent admits the jurisdictional allegations through paragraph 8 of the Amended Complaint, neither admits nor denies the factual allegations and denies the legal conclusions, especially at paragraphs 14 and 15.

5. Respondent waives its right to a hearing under 40 C.F.R. §22.15(c), and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. §7413(d).

6. Respondent certifies that it is complying fully with the Act and the requirements of 40 C.F.R. Part 60, at any and all hot mix asphalt plants that it owns or operates.

7. The parties consent to the terms of this Consent Agreement and Final Order (CAFO).

8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

### Civil Penalty

9. In consideration of Respondent's good faith efforts to resolve this matter and its cooperation in providing U.S. EPA with information during the pendency of this matter, the nature

of the violations, and other relevant factors, U.S. EPA agrees to mitigate the proposed penalty amount to \$40,000, to be paid as described in paragraph 10, below.

10. Respondent shall pay the United States the \$40,000 civil penalty as follows. Within 30 days of the date that U.S. EPA files a fully executed copy of this CAFO with the Regional Hearing Clerk, Respondent shall pay \$20,000. Within 60 days of the date that U.S. EPA files the fully executed copy of this CAFO, Respondent shall pay the remaining \$20,000.

11. The penalty shall be paid by certified or cashier's check or money order, payable to "Treasurer, United States of America," and mailed to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

12. A transmittal letter, stating Respondent's name, complete address, the case docket number and the billing document number must accompany the payment. Respondent shall write the case docket number and billing document number on the face of the check. Respondent shall send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk  
U. S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd. (MF-10J)  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U. S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Louise Gross (C-14J)  
Office of Regional Counsel  
U. S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

13. This civil penalty is not deductible for federal tax purposes.

14. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5), to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

15. Interest shall accrue on any amount overdue from the date the payment was due at a rate established under 26 U.S.C. §6621(a)(2). Respondent shall pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Respondent shall pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. §7413(d)(5). This nonpayment penalty shall be 10 percent of the aggregate amount of

the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

### General Provisions

16. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in the complaint.

17. Nothing in this CAFO shall restrict U.S. EPA's authority to seek Respondent's compliance with the Act and other applicable laws.

18. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws and regulations.

19. Complainant asserts that this CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. §7413(e). Respondent neither admits nor denies Complainant's assertion and shall not be precluded from asserting any defenses, mitigating facts or other arguments that it may have to such use.

20. The terms of this CAFO shall bind the Respondent, its officers, directors, agents, successors, authorized representatives and assigns.

21. Each person signing this Consent Agreement certifies that he or she has authority to sign this Consent Agreement for the party whom he or she represents and to bind that party to its terms.

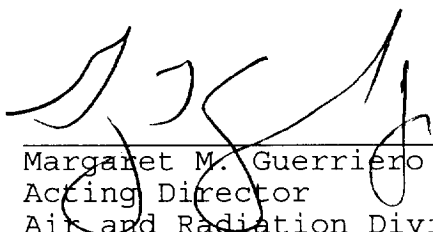
22. Each party shall bear its own costs, fees and disbursements in this action.

23. This CAFO constitutes the entire agreement between the parties.

**U.S. Environmental Protection  
Agency, Complainant**

Date: 9/24/99

By:

 FOR  
\_\_\_\_\_  
Margaret M. Guerriero  
Acting Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5

In the Matter of: Bob Propheter Construction, L.L.C.,  
Docket No. CAA-98-033A

Bob Propheter Construction, L.L.C.,  
Respondent


Date: 9/03/99

By:   
Bob Propheter Construction, L.L.C.

**Final Order**

It is ordered as agreed to by the parties and as stated in the Consent Agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This Order disposes of the matter under 40 C.F.R. § 22.18(c).

Date: 9/28/99

  
Francis X. Lyons  
Regional Administrator  
Region 5  
U.S. Environmental Protection  
Agency

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CERTIFICATE OF SERVICE

I, Betty Williams, do hereby certify that the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 W. Jackson Boulevard, Chicago, Illinois 60604 and that correct copies, were mailed first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Mike Prophter, Registered Agent  
Bob Prophter Construction, L.L.C.  
P.O. Box 658  
18573 Pennington Road  
Sterling, Illinois 61081

and

Christine G. Zeman  
Hodge & Dwyer  
808 South Second Street  
Post Office Box 5776  
Springfield, IL 62705-5776

I also certify that copies of the Consent Agreement and Final Order were sent by First Class Mail to:


David Kolaz, Chief  
Compliance and Systems Management Section  
Bureau of Air  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702

and

Richard Jennings, Regional Manager  
Illinois Environmental Protection Agency  
Chicago Regional Office  
5415 North University Avenue  
Peoria, Illinois 61614



on the 29<sup>th</sup> day of September, 1999.

  
Betty Williams, Secretary  
AECAS (IL/IN Section)

CERTIFIED MAIL RECEIPT NUMBER: P140895451